

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JONATHAN C. GUY

(b) County of Residence of First Listed Plaintiff Delaware
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Telephone Number, and Email Address)

Richard C. Sokorai, High Swartz LLP, 40 E. Airy Street, Norristown, PA 19404, 610-275-0700, rsokorai@highswartz.com

DEFENDANTS

WEILER LABELING SYSTEM, LLC

County of Residence of First Listed Defendant Burlington
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

USERRA 38 U.S.C. Section 4311

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
In excess of \$100,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/19/2012

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JONATHAN C. GUY
Plaintiff

v.

WEILER LABELING SYSTEMS, LLC
Defendant

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT

PARTIES

1. Plaintiff, Jonathan C. Guy ("Plaintiff"), is an adult individual and resident of the United States and the Commonwealth of Pennsylvania who currently resides at 110 South Congress Street, Newtown, Pennsylvania 18940.

2. Defendant, Weiler Labeling Systems, LLC ("WLS" or "Defendant") is a Delaware limited liability corporation organized under the laws of the State of Delaware, with a principal office at 1256 North Church Street, Suite 7, Moorestown, New Jersey 08057.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to the Uniformed Services Employment and Re-employment Rights Act (USERRA) at 38 U.S.C. § 4323(b)(3).

4. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over Plaintiff's state claim related to violations of the New Jersey Soldiers' and Sailors' Civil Relief Act, N.J. Stat. Ann. § 38:23C-1, *et seq.*, specifically at § 38:23C-20.¹

¹ This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as the Plaintiff is a citizen of the Commonwealth of Pennsylvania and Defendant is a limited liability company organized in Delaware with a principal place of business in New Jersey.

5. Venue is proper in the United States District Court for the District of New Jersey, as Defendant maintains a place of business within the State of New Jersey by virtue of a registered office 1256 North Church Street, Suite 7, Moorestown, New Jersey, 08057. *See* 38 U.S.C. § 4323(c)(2).

FACTS

6. At all times relevant, Plaintiff was a member and officer of the United States Army Reserve, with the rank of Captain, assigned as a Federal Emergency Management Administration Coordination Officer in the Office of the Chief, Army Reserve.

7. Beginning on or about October 1, 2011, and under the terms of his employment agreement (the "Employment Agreement"), Plaintiff began working for WLS as Vice President of Sales and Marketing. *See* Employment Agreement, attached hereto as Exhibit "A".

8. As part of Plaintiff's military-related duties, Plaintiff, from time to time, performs military service that demands his time and require leave of absence from his duties working for WLS.

9. Defendant insisted upon putting a clause in Plaintiff's employment contract that he was only permitted two weeks of unpaid leave for military service.

10. Throughout Plaintiff's employment with Defendant, Plaintiff, on more than one occasion, took leaves of absence for military service.

11. At all times relevant, including before and after any of his military leaves of absence, Plaintiff performed his employment at WLS in a satisfactory and above satisfactory manner.

12. On or about November 2, 2012, Plaintiff notified WLS, specifically Theodore ("Ted") S. Geiselman ("Geiselman"), President of WLS, that Plaintiff was taking a brief leave of

absence for service in Washington, D.C., for military duty associated with Hurricane Sandy disaster relief efforts.

13. Plaintiff's first period of duty with respect to his Hurricane Sandy assignment lasted until November 5, 2012, at which time Plaintiff returned to WLS to inform Geiselman in person that Plaintiff was required to return to Washington, D.C., for a total of thirty (30) days of duty for continued support of Hurricane Sandy relief efforts.

14. Plaintiff returned to work with WLS after his military service ended on November 19, 2012.

15. On November 26, 2012, Plaintiff was approached by Geiselman, was presented with a severance agreement, and was effectively terminated by WLS without cause.

16. Subsequently, when Geiselman learned that Plaintiff had sought advice regarding his rights under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), Defendant retaliated by adversely changing the proposed severance agreement.

17. On more than one occasion prior to Plaintiff's termination, Geiselman took issue with Plaintiff's military service, indicating his disapproval of leaves of absence for military service.

18. When Plaintiff attended annual military training from July 12 to July 27, 2012, Geiselman expressed strong verbal disapproval of Plaintiff's absence for military training.

19. When Plaintiff returned to WLS on November 5 to inform Geiselman of Plaintiff's extended military service for Hurricane Sandy relief, Plaintiff, who appeared in a military uniform, was mocked by Geiselman and questioned if he was wearing "[his] Halloween costume."

20. Plaintiff's termination was without cause, but instead based on Plaintiff's service in the Army Reserve.

21. As a result of the aforementioned adverse employment actions, Defendant has violated USSERA and the New Jersey Soliders' and Sailors' Civil Relief Act.

COUNT I
VIOLATION OF USERRA, 38 U.S.C. § 4301, *et seq.*

22. Plaintiff incorporates all previous paragraphs of this Complaint as though set forth at length herein.

23. All of the aforementioned actions constitute violations of USERRA at 38 U.S.C. § 4311, specifically § 4311(a) and § 4311(b).

24. The adverse actions/inactions were willful failures to comply with USERRA entitling Plaintiff to liquidated damages pursuant to 38 U.S.C. § 4323(d)(1).

WHEREFORE, Plaintiff Jonathan Guy prays that this Court will:

- a. Enter an Order directing Defendant Weiler Labeling Systems, LLC, to comply with all provisions of USERRA;
- b. Enter judgment in favor of Plaintiff Jonathan Guy and against Defendant Weiler Labeling Systems, LLC, for damages – including, but not limited to, damages for delayed and/or denied raises, lost earnings and/or wages, promotions and diminished earning capacity, together with costs, prejudgment interest and post judgment interest as the law may allow pursuant to 38 U.S.C. § 4323(d)(1)(B), in an amount in excess of \$100,000;
- c. Award the Plaintiff Jonathan Guy liquidated damages in amount equal to the compensatory damages referenced above in subparagraph (b) pursuant to 38 U.S.C. § 4323(d)(1)(C);

d. Award the Plaintiff Jonathan Guy his attorneys' fees, expert witness fees and other litigation expenses pursuant to 38 U.S.C. § 4323(h)(2);

e. Retain jurisdiction to ensure the Defendant Weiler Labeling System, LLC's compliance with any Order issued by this Court; and

f. Award such other and further legal and equitable relief as may be necessary and appropriate to redress fully the deprivation of Plaintiff Jonathan Guy's rights, to prevent their recurrence in the future, and to prevent other employees of the defendant Weiler Labeling Systems, LLC, from experiencing such unlawful behavior.

COUNT II
VIOLATION OF NEW JERSEY SOLDIERS' AND SAILORS'
CIVIL RELIEF ACT, N.J. STAT. ANN. § 38:23C-1 *et seq.*

25. Plaintiff incorporates all previous paragraphs of this Complaint as though set forth at length herein.

26. The aforementioned actions and/or inactions of Defendant were motivated by Plaintiff's military service and also constituted violations of the New Jersey Soldiers' and Sailors' Civil Relief Act, specifically N.J. Stat. Ann. § 38:23C-20.

27. As a further direct and proximate result of the discriminatory and retaliatory conduct of Defendant in response to Plaintiff's military service, Plaintiff was caused to suffer embarrassment, humiliation and emotional distress.

28. The actions of Defendant are violations of public policy and constitute wrongful employment actions against Plaintiff.

29. The aforementioned actions and/or inactions of Defendant were outrageous, done in a willful and wanton fashion, with a conscious indifference and/or reckless disregard for the rights of Plaintiff, malicious and/or intentional, and so egregious as to be beyond the bounds of

decency in a civilized society, and was in direct violation of specific ordinances, laws, statutes and regulations.

WHEREFORE, Plaintiff Jonathan Guy prays that this Court will enter judgment in favor of Plaintiff Jonathan Guy and against Defendant Weiler Labeling Systems, LLC, and provide the following relief:

- a. Enter an Order directing defendant Weiler Labeling Systems, LLC, to comply with all provisions of the New Jersey Soldiers' and Sailors' Civil Relief Act, N.J. Stat. Ann. § 38:23C-1, *et seq.*;
- b. Enter judgment in favor of Plaintiff Jonathan Guy and against Defendant Weiler Labeling Systems, LLC, for damages – including, but not limited to, damages for delayed and/or denied raises, lost earnings and/or wages, promotions and diminished earning capacity, together with costs, prejudgment interest and post judgment interest as the law may allow pursuant to N.J. Stat. Ann. § 38:23C-1, *et seq.*, in an amount in excess of \$100,000;
- c. Award the Plaintiff compensatory damages related to his embarrassment, humiliation, and emotional distress;
- d. Award the Plaintiff punitive damages to prevent similar conduct from happening to other employee members of the armed forces;
- e. Award the Plaintiff his attorneys' fees, expert witness fees and other litigation expenses; and
- f. Award such other and further legal and equitable relief as may be necessary and appropriate to redress fully the deprivation of the Plaintiff Jonathan Guy's rights, to prevent their recurrence in the future, and to prevent other employees of the Defendant Weiler Labeling Systems, LLC, from experiencing such unlawful behavior.

COUNT III
DECLARATORY JUDGMENT

30. Plaintiff incorporates all previous paragraphs of this Complaint as though set forth at length herein.

31. There is a non-compete provision in Plaintiff's Employment Agreement, purporting to preclude Plaintiff from engaging in related business activities for two years following his termination. See Employment Agreement, Article VII, Paragraph 7.1, attached hereto as Exhibit "B".

32. Plaintiff's termination was without cause and is in violation of USERRA and the New Jersey Soldiers' and Sailors' Civil Relief Act.

33. To find the non-competition clause enforceable as against Plaintiff in light of the unlawful manner in which Plaintiff was terminated would be inequitable, unconscionable, and against public policy.

WHEREFORE, Plaintiff Jonathan Guy prays that this Court will enter judgment in favor of Plaintiff Jonathan Guy and against Defendant Weiler Labeling Systems, LLC, and declare that the non-competition clause contained in the Employment Agreement is unenforceable.

JURY DEMAND

Plaintiff hereby demands a jury trial for all claims for which he is entitled a jury trial.

HIGH SWARTZ LLP

By: 

Richard C. Sokorai
I.D. No. 019281997
40 East Airy Street
Norristown, PA 19404
(610) 275-0700
Attorney for Plaintiff

Date: December 19, 2012